

United States Court of Appeals For the First Circuit

No. 05-1450
DC No. 04-12641

WALTER HOWARD,

Petitioner - Appellant,

v.

ROBERT MURPHY, Superintendent, Nemasket Correctional,
Center,

Respondent - Appellee.

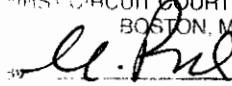
Order Of The Court
Entered: June 15, 2005

Appellant's Motion to Proceed on Appeal In Forma Pauperis and Affidavit to Accompany Motion for Leave to Proceed in Forma Pauperis is transmitted herewith to the district court for action in the first instance pursuant to Fed. R. App. P. 24(a)(1). Copies of the district court's ruling shall be forwarded to this court. The district court, if it denies the motion, is requested to state its reasons in writing. Fed. R. App. P. 24(a)(2). If defendant-appellant is not granted in forma pauperis status by the district court, he may file a motion to proceed in forma pauperis in this court, provided that he do so in accordance with Fed. R. App. P. 24(a)(5).

CERTIFIED COPY
HEREBY CERTIFY THIS DOCUMENT
IS A TRUE AND CORRECT COPY OF
THE ORIGINAL ON FILE IN MY OFFICE
AND IN MY LEGAL CUSTODY.

FIRST CIRCUIT COURT OF APPEALS

BOSTON, MA

 Date: 6/15/05

By the Court:

Richard Cushing Donovan, Clerk

MARGARET CARTER

By: _____
Chief Deputy Clerk

[certified copy: Sarah Allison Thornton, Clerk U.S. District Court,
Judge D. Woodlock]
[cc: Walter Howard, Susanne Reardon, AAG]

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

WALTER HOWARD, PRO SE,
PETITIONER/APPELLANT,

FILED IN CLERKS OFFICE
U.S. DISTRICT COURT
FOR THE FIRST CIRCUIT

U.S.D.C #: 04-12641-DPW

VS.

U.S. Appeals #: 05-1450

ROBERT MURPHY, Superintendant,
Nemasket Corr. Center.
Defendant/appellee.

Dear Clerk;

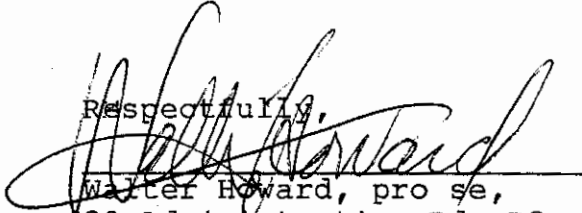
Enclosed for filing, please find:

- 1) Motion to proceed on appeal in Forma Pauperis.
- 2) Federal Form 4: Affidavit to accompany motion for leave to appeal in Forma Pauperis.
- 3) Copy of: Order of default and intent to dismiss, by the First Circuit Court of Appeals, entered: JUNE 7th, 2005.

THank you.

cc:
A.G. Tom Rielly, Esq.
U.S. Court of Appeals
Attorney Mark J. Gillis, ESq.
File.

Respectfully,


Walter Howard, pro se,
30 Administration Rd. D2.
Bridgewater, MA. 02324.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

WALTER HOWARD, pro se,
Petitioner/Appellant,

vs.

District Court #: 04-12641
US Appeals Court #: 05-1450

ROBERT MURPHY, Superintendant,
Nemasket Correctional Center,
Defendant/Appellee.

MOTION TO PROCEED ON APPEAL
in FORMA PAUPERIS

In compliance with the June 7th 2005 order of the United States Court of Appeals for the First Circuit, this petitioner MOVES this Honorable Court to allow him to proceed on appeal in forma pauperis.

This petitioner is not a prisoner as defined by 28 USC § 1915, and he is indigent. See the federal "Form 4: Financial Affidavit," attached hereto.

The Massachusetts Department of Correction was notified of the Appeals Court's Order to provide a "Certified prison account statement" to the District Court, and was informed of a time limit.

Petitioner is currently a "civil law pre trial detainee," and is not currently incarcerated for crime. This petitioner is forced to rely upon family members for supplemental food, clothing, postage fees, paper, magazines, hygiene materials, typewriter ribbons, and more. He only receives, on average, approximately, one hundred and twenty dollars per month.

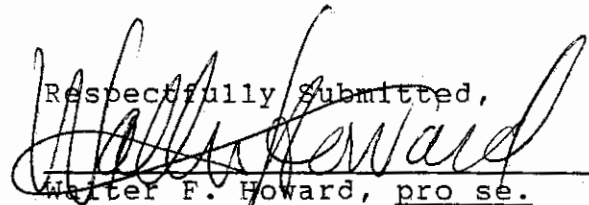
Wherefore, this petitioner respectfully moves this Honorable Court to Grant him in Forma Pauperis status, and allow him to

2005 JUN 13 P 12:41
U.S. DISTRICT COURT
DISTRICT OF MASSACHUSETTS
CLERK'S OFFICE

proceed on Appeal, in Forma Pauperis.

Signed under the pains and penalties of perjury this 10th
day of June, 2005.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Walter F. Howard", is written over a horizontal line.

Walter F. Howard, pro se.

Nemasket Correctional Center
30 Administration Rd. D2.
Bridgewater, MA. 02324.

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

Walter Howard, pro se,
Petitioner/Appellant,

vs.

Appeals Docket #: 05-1450

Robert Murphy, Superintendent,
Nemasket Correctional Center,
Defendant/Appellee.

Date: 6/10/05

Dear Clerk Carter;

Please find enclosed:

- 1) Motion to the U.S. District Court to proceed on appeal in Forma Pauperis.
- 2) A Federal Form 4: Affidavit to accompany the above named motion to leave to appeal in Forma Pauperis.

Would you please make a record of these District Court filings, with the date your court received them.

Also, please note that I have informed/requested a "certified copy of my prison account statement, today, June 10th of 2005."

If this step was unnecessary, I appologize for the inconvenience, and will await further instructions from your court.

Thank you for your time,

Walter Howard, pro se.
Nemasket Correctional Center.
30 Administration Rd. D2-23
Bridgewater, MA. 02324.

**Affidavit to Accompany
Motion for Leave to Appeal in Forma Pauperis**

COPY

District Court No. 04-CV-12641

Appeal No. 05-1450

Walter Howard, pro se.

v.

Robert Murphy, Superintendent, Nomanstet Corr. Center,

Affidavit in Support of Motion

I swear or affirm under penalty of perjury that, because of my poverty, I cannot prepay the docket fees of my appeal or post a bond for them. I believe I am entitled to redress. I swear or affirm under penalty of perjury under United States laws that my answers on this form are true and correct. (28 U.S.C. § 1746; 18 U.S.C. § 1621.)

Signed: Walter Howard

Instructions

Complete all questions in this application and then sign it. Do not leave any blanks: if the answer to a question is "0," "none," or "not applicable (N/A)," write in that response. If you need more space to answer a question or to explain your answer, attach a separate sheet of paper identified with your name, your case's docket number, and the question number.

Date: 06-08-05

My issues on appeal are: Certificate of Appealability.

Issues for writ of habeas Corpus petition:

- 1) ineffective assistance of Counsel, 2) Defendant diminished in capacity via intoxication during colloquy, 3) numerous civil rights deprivation, 4) No competency examination ordered.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	\$ <u>0.</u>	\$ <u>0.</u>	\$ <u>0.</u>	\$ <u>0.</u>
Self-employment	\$ <u>0.</u>	\$ <u>0.</u>	\$ <u>0.</u>	\$ <u>0.</u>
Income from real property (such as rental income)	\$ <u>0.</u>	\$ <u>0.</u>	\$ <u>0.</u>	\$ <u>0.</u>
Interest and dividends	\$ <u>0.</u>	\$ <u>0.</u>	\$ <u>0.</u>	\$ <u>0.</u>

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Gifts	\$ <u>120.-</u>	\$ <u>0.</u>	\$ <u>0.</u>	\$ <u>0.</u>
Alimony	\$ <u>0.</u>	\$ <u>0.</u>	\$ <u>0.</u>	\$ <u>0.</u>
Child support	\$ <u>0.</u>	\$ <u>0.</u>	\$ <u>0.</u>	\$ <u>0.</u>
Retirement (such as social security, pensions, annuities, insurance)	\$ <u>0.</u>	\$ <u>0.</u>	\$ <u>0.</u>	\$ <u>0.</u>
Disability (such as social security, insurance payments)	\$ <u>0.</u>	\$ <u>0.</u>	\$ <u>0.</u>	\$ <u>0.</u>
Unemployment payments	\$ <u>0.</u>	\$ <u>0.</u>	\$ <u>0.</u>	\$ <u>0.</u>
Public-assistance (such as welfare)	\$ <u>0.</u>	\$ <u>0.</u>	\$ <u>0.</u>	\$ <u>0.</u>
Other (specify): <u>Gifts for clothing</u>	\$ <u>30.-</u>	\$ <u>0.</u>	\$ <u>0.</u>	\$ <u>0.</u>
Total Monthly income:	\$ <u>150.-</u>	\$ <u>0.</u>	\$ <u>0.</u>	\$ <u>0.</u>

The above totals are approximate by average.

2. List your employment history, most recent employer first. (Gross monthly pay is before taxes or other deductions)

Employer	Address	Dates of Employment	Gross monthly pay
SoundStage 9 Co. Inc.	44 French St. Lowell	1988 - 1991	≈ \$ 2,000.-
W.F. Howard Painting	74 Branch St. Lowell	1976 - 1980	≈ 1,600.-
* prior to 1988, Petitioner was receiving SSDI			≈ \$ 500.-

3. List your spouse's employment history, most recent employer first. (Gross monthly pay is before taxes or other deductions)

Employer	Address	Dates of Employment	Gross monthly pay
N/A	Appellant is	unmarried	

4. How much cash do you and your spouse have? \$ 200.- Just recieved clothing allowance from family.

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial Institution	Type of Account	Amount you have	Amount your spouse has
Department of Correction	personal	\$ <u>200.-</u>	\$ <u>0.</u>
		\$ _____	\$ _____
		\$ _____	\$ _____

If you are a prisoner, you must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account.

Petitioner is a detainee pursuant to Civil Law, and is not confined by Criminal sentence.

5. List the assets, and their values, which you or your spouse owns. Do not list clothing and ordinary household furnishings.

Home	(Value)	Other real estate	(Value)	Motor Vehicle #1	(Value)
<u>0.</u>		<u>0.</u>		Make & year: <u>0.</u>	
				Model: _____	
				Registration#: _____	
Motor Vehicle #2	(Value)	Other assets	(Value)	Other assets	(Value)
Make & year: <u>0.</u>		old Typewriter # <u>30.-</u>		<u>0.</u>	
Model: _____		Zenith 13" Television # <u>100.-</u>			
Registration#: _____					

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
<u>None</u>	<u>N/A</u>	<u>N/A</u>

7. State the persons who rely on you or your spouse for support.

Name	Relationship	Age
<u>None</u>	<u>N/A</u>	<u>N/A</u>

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate.

		You	Spouse
Rent or home mortgage payment (include lot rented for mobile home)		\$ <u>0.</u>	\$ <u>N/A</u>
Are any real estate taxes included? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
Is property insurance included? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
Utilities (electricity, heating fuel, water, sewer, and Telephone)		\$ <u>0.</u>	\$ <u>N/A</u>
Home maintenance (repairs and upkeep)		\$ <u>0.</u>	\$ <u>N/A</u>
Food	Avg.	\$ <u>120.</u>	\$ <u>N/A</u>
Clothing	Avg.	\$ <u>10.</u>	\$ <u>N/A</u>
Laundry and dry-cleaning	Avg.	\$ <u>2.</u>	\$ <u>N/A</u>
Medical and dental expenses		\$ <u>0.</u>	\$ <u>N/A</u>
Transportation (not including motor vehicle payments)		\$ <u>0.</u>	\$ <u>N/A</u>
Recreation, entertainment, newspapers, magazines, etc.		\$ <u>9.</u>	\$ <u>N/A</u>
Insurance (not deducted from wages or included in Mortgage payments)		\$ <u>0.</u>	\$ <u>N/A</u>
Homeowner's or renter's		\$ <u>0.</u>	\$ <u>N/A</u>
Life		\$ <u>0.</u>	\$ <u>N/A</u>
Health		\$ <u>0.</u>	\$ <u>N/A</u>
Motor Vehicle		\$ <u>0.</u>	\$ <u>N/A</u>
Other: _____		\$ <u>0.</u>	\$ <u>N/A</u>
Taxes (not deducted from wages or included in Mortgage payments)(specify): _____		\$ <u>0.</u>	\$ <u>N/A</u>
Installment payments		\$ <u>0.</u>	\$ <u>N/A</u>
Motor Vehicle		\$ <u>0.</u>	\$ <u>N/A</u>
Credit card (name): _____		\$ <u>0.</u>	\$ <u>N/A</u>
Department store (name): _____		\$ <u>0.</u>	\$ <u>N/A</u>
Other: _____		\$ <u>0.</u>	\$ <u>N/A</u>

Alimony, maintenance, and support paid to others	\$ <u>0.</u>	\$ <u>N/A</u>
Regular expenses for operations of business, profession, or farm (attach detailed statement)	\$ <u>0.</u>	\$ <u>N/A</u>
Other (specify): <u>Postage & paper</u> Avg. \approx	\$ <u>12.40</u>	\$ <u>N/A</u>
Total monthly expenses:	\$ <u>153.40</u>	\$ <u>N/A</u>

9. Do you expect any major changes to your monthly income or expenses in your assets or liabilities during the next 12 months?

☐ Yes ☒ No

If yes, describe on an attached sheet.

10. Have you paid — or will you be paying — an attorney any money for services in connection with this case, including the completion of this form? ☐ Yes ☒ No

If yes, how much? \$ 0.

If yes, state the attorney's name, address, and telephone number:

N/A

11. Have you paid — or will you be paying — anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

☒ Yes ☐ No

If yes, how much? \$ 50.-

If yes, state the person's name, address, and telephone number:

Robert Mertic, 30 Administration Rd
Bridgewater, Ma. 02324

12. Provide any other information that will help explain why you cannot pay the docket fees for your appeal.

I had completed a prison sentence in June of 2000, but was petitioned for "Civil Commitment" under M.G.L. 123A. I have unfortunately remained a pre trial detainee for 5 years, illegally, and have had to rely on my family for support. My mom is 80 years old and receiving Social Security. Money is extremely tight. I am not allowed to earn a meaningful wage with the DOC.

13. State the address of your legal residence.

30 Administration Rd.

Bridgewater, MA. 02324

Your daytime phone number: (978) 885-1677

Your age: 49

Your years of schooling: 14

* This phone # is
my Brother's #;
and can be contacted
if necessary.